

## Message Text

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ACTION SS-30

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R 271720Z FEB 74

FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC 9959

S E C R E T NEW DELHI 2851

EXDIS

E.O. 11652: GDS

TAGS: OGEN, IN, UR, US

SUBJ: REFUGEES

REF: (A) NEW DELHI 727; (B) STATE 25558

1. I APPRECIATE YOUR REPLY ON REFUGEES, BUT IT REALLY DOESN'T DEAL DIRECTLY WITH THE ISSUES I RAISED. OBVIOUSLY, WE'LL CONTINUE TO TRY TO HANDLE REFUGEES AS WE HAVE IN THE PAST WHEN- EVER POSSIBLE -- OBTAIN INFORMATION, ASK THEM TO LEAVE AND COME BACK IF THEY CAN, AND TRY TO GET THEM INTO REGULAR REFUGEE PROCESSING CHANNELS IN EUROPE.

2. BUT I'M STILL LEFT WITH THE PROBLEM OF REFUGEES UNDER "HOT PURSUIT". HERE ARE SOME THOUGHTS ON YOUR SUGGESTIONS FOR WAYS TO DEAL WITH THOSE POOR SOULS:

(A) REFUGEE CONVENTION: YOU'VE GOT THE RIGHT WAY TO APPROACH THE INDIANS ON THIS -- A CAMPAIGN BY SEVERAL COUNTRIES SEEKING THE ACCESSION OF OTHER COUNTRIES AS WELL AS INDIA. IT'S WORTH TRYING, BUT I DOUBT IT WILL WORK. INDIA IS TOO CLOSE TO THE SOVIET UNION, WHICH HAS TOO MANY OF ITS CITIZENS VISITING HERE, FOR INDIA TO EASILY DISREGARD SOVIET PRESSURES NOT TO ACCEDE TO THE CONVENTION.

(B) INFORMAL ARRANGEMENT: THE UNITED STATES SIMPLY DOESN'T HAVE THE KIND OF RELATIONSHIP WITH INDIA NECESSARY FOR AN INFORMAL ARRANGEMENT UNDER WHICH THE GOI WOULD GIVE US TIME

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TO PROCESS THE REFUGEES FOR RESETTLEMENT. NOR COULD SUCH AN

ARRANGEMENT SURVIVE ANY PUBLICITY HERE. THE SOVIETS OR EASTERN EUROPEANS WOULD ONLY HAVE TO DROP A HINT TO A NEWSMAN THAT THE US EMBASSY WAS HARBORING A REFUGEE IN VIOLATION OF GOI REGULATIONS AND THAT THE GOI WASN'T DOING ANYTHING. THE TOWN WOULD BE IN AN UPROAR, AND THE GOI WOULD HAVE TO DENY THAT ANY ARRANGEMENT EXISTED. OF COURSE, WE COULD TRY TO GET THE INDIANS TO CHANGE THEIR REGULATIONS BUT THAT, I'M CONVINCED, IS A SURE LOSER.

(C) UNHCR: I DON'T SEE HOW THE UNHCR REPRESENTATIVE COULD UNDERTAKE ANY RESPONSIBILITY WITHOUT GOI ACCESSION TO THE CONVENTION OR AT LEAST PRIOR GOI AGREEMENT. THE GOI ISN'T LIKELY TO DO THE LATTER IF IT ISN'T WILLING TO DO THE FORMER. AGAIN, REFUGEE STORIES ARE BIG NEWS HERE, AND THE GOI COULDN'T LIVE WITH EXPOSURE OF A PRIVATE "DEAL".

3. THIS LEAVES YOUR SUGGESTION ABOUT USING INDIAN LAW AND TURNING THE PUBLICITY MACHINE AROUND TO WORK IN OUR FAVOR. TOGETHER THESE MAY CONSTITUTE A WORKABLE SOLUTION. THE INDIAN LAWYER WHO REPRESENTED THE TWO REFUGEES WHO SUCCESSFULLY FOUGHT EXTRADITION FROM INDIA TO THE SOVIET UNION TELLS US THAT A FOREIGNER IS PROTECTED BY ARTICLES 20, 21 AND 22 OF THE INDIAN CONSTITUTION, WHICH INCLUDES "DUE PROCESS". THERE IS NO LAW OR DIRECTIVE EMPOWERING THE CENTRAL GOVERNMENT TO DEPORT A PERSON TO A SPECIFIED PLACE AGAINST HIS WISHES. THE LAWYER MADE THIS ARGUMENT TO THE HOME MINISTRY IN THE 1967 CASE OF ULUGZADE, WHO WAS ULTIMATELY PERMITTED TO LEAVE INDIA FOR A DESTINATION OF HIS CHOICE. (WE WILL POUCH A LEGAL MEMORANDUM ON THIS SUBJECT TO NEA/INS MARCH 1, 1974).

4. PUBLICITY CAN EFFECTIVELY REINFORCE ANY SUCH LEGAL DEMAND FOR DUE PROCESS. A WORD TO THE INDIAN NON-COMMUNIST ENGLISH-LANGUAGE PRESS, WHICH STAUNCHLY UPHOLDS INDIVIDUAL RIGHTS, WOULD BE SUFFICIENT.

5. HERE IS A SCENARIO I WOULD PLAN TO FOLLOW: AFTER ESTABLISHING THAT A REFUGEE'S PRESENCE IN THE EMBASSY WAS KNOWN AND THAT HE WAS WILLING TO BE PLACED IN THE HANDS OF THE GOI, WE WOULD ASK A LAWYER SUCH AS THE ONE WHO REPRESENTED ULUGZADE TO MEET THE REFUGEE. SIMULTANEOUSLY, WE WOULD SEEK AN ASSURANCE FROM

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THE GOI THAT HE WOULD BE PROTECTED, ACCORDED DUE PROCESS OF INDIAN LAW AND NOT BE ARBITRARILY RETURNED TO HIS COUNTRY OF ORIGIN, I DON'T SEE WHY THE GOI COULDN'T GIVE US THIS ASSURANCE. WE WOULD THEN TURN THE REFUGEE OVER TO THE GOI AND ISSUE A STATEMENT ABOUT OUR EXPECTATIONS FOR GOI ACTION IN ACCORDANCE WITH DUE PROCESS ETC. ETC. THE LAW AND THE PRESS WOULD BE A CHECK ON THE GOI ARBITRARILY TURNING A REFUGEE OVER TO HIS OWN EMBASSY. (THE RECENT SOVIET REFUGEE, PAKHOMOV,

HAD NO LAWYER. INDEED, NO INDIAN OTHER THAN THE TAXI DRIVER EVER TALKED TO HIM BEFORE THE GOI GOT HOLD OF HIM. AS A RESULT, THERE WAS NO ONE TO PRESS HIS REQUEST FOR ASYLUM WITH THE GOI OR GIVE HIS SIDE OF THE STORY TO THE PRESS).

6. WE SHOULD HAVE TIME TO CONSULT YOU IN ANY CASE. THE BRITISH CONTACTS WITH THE GOI OVER THE PAKHOMOV CASE INDICATE THAT THE GOI RECOGNIZES SOME NEED FOR A DIPLOMATIC MISSION TO GET INSTRUCTIONS BEFORE ACTING. THE BRITISH EXPLAINED TO THE GOI THAT THEIR DELAY IN HANDING OVER PAKHOMOV WAS CAUSED BY THEIR NEED TO SEEK INSTRUCTIONS. THE INDIANS DID NOT OBJECT. WE WOULD PLAN TO FOLLOW SIMILAR COURSE.

7. THERE ARE, OF COURSE, THE MORE DIFFICULT PROBLEMS WHICH COULD OCCUR IF THE REFUGEE REFUSED TO BE TRANSFERRED TO GOI HANDS, OR IF FOR PHYSICAL OR PSYCHOLOGICAL REASONS HE WAS UNABLE TO GIVE HIS CONSENT TO BE TRANSFERRED. THE FORMER WOULD, I FEAR, SIMPLY LEAD TO A CONFRONTATION WITH THE GOI UNLESS WE WERE SUCCESSFUL IN PERSUADING THE REFUGEE TO CHANGE HIS MIND. IN THE LATTER INSTANCES, WHILE WE WOULD SEEK YOUR ADVICE, I CANNOT SEE ANY WAY IN WHICH THE EMBASSY COULD PROVIDE EXTENDED SHELTER TO SOMEONE WHO WAS EITHER PHYSICALLY OR MENTALLY INCOMPETENT AND WOULD THINK WE WOULD HAVE TO HAND HIM OVER TO INDIAN AUTHORITIES WITH WHATEVER PROTECTION AN INDIAN LAWYER WOULD BE ABLE TO PROVIDE.

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